



CABLE & WIRELESS FEDERAL COMMUNICATIONS COMMISSION
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EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.,
Washington, D.C. 20554

Re: AT&T Corp., VLT Co. L.L.C., Violet License Co. L.L.C. and TNV [Bahamas]
Ltd., Seek FCC Consent for Grant of Section 214 Authority, Modification of
Authorizations and Assignment of Licenses in Connection with the Proposed Joint
Venture between AT&T and British Telecommunications plc (IB docket 98-212)

Dear Ms. Salas:

Pursuant to conversations with Sherille Ismail and Kathryn O'Brien of the FCC's International Bureau staff, Cable & Wireless seeks to submit for the record in the above-cited proceeding a further explanation of its concerns with regard to issues of stranded capacity on the transatlantic route.

As discussed in an earlier ex parte letter filed in this proceeding May 19, 1999, C&W is concerned about the potential impact on both competition and consumers of the terms of the proposed joint venture between BT and AT&T. Those concerns relate to (1) the joint venture's ability to act unilaterally to strand half-circuits on the transatlantic route, raising costs for C&W and other competitors; (2) the venture's ability to use British Telecom's market power in the United Kingdom to harm competition on the U.S.-U.K. route; and (3) the ability of the BT-AT&T combination to leverage that market power into dominance on other routes, particularly "thin routes" to third countries.

C&W's concerns regarding the transatlantic route are based on provisions in the Framework Agreement between BT and AT&T. Cable & Wireless is concerned that those companies will use the joint venture to self-terminate their transatlantic traffic, "stranding" half-circuits AT&T has with C&W. That would raise costs for C&W and would take capacity off the market. C&W is asking the FCC to condition its approval of the joint venture by requiring that the joint venture and its parents divest their half-

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circuits to other carriers at market prices, but only to the extent that actual stranding (or significant idling) of half-circuits occurs.

This ex parte letter is an attempt to better explain concerns about the stranded capacity issue by reviewing the FCC's long line of orders and policies designed to guard against attempts in many industries to purposely tie up or idle transmission capacity, orbital slots, spectrum, or other vital inputs needed by competitors to operate with an intent to raise their costs or otherwise limit their ability to compete. The FCC in fact, has had a longstanding policy of prohibiting such anticompetitive warehousing of vital inputs, seeing it properly as a clear attempt to prevent competitors from entering telecom markets or to increase their costs of service.

In its *Foreign Participation Order*, the Commission expressed specific concern about the potential that carriers could engage in warehousing of cable capacity.¹ The FCC stated in that order that it was concerned about the "potential for concentration of supply on U.S. international routes." It further noted that it had eliminated the requirement that circuit status information be filed on a facility-by-facility basis as part of its effort to be "the least intrusive and burdensome. . .as possible." And the Commission delegated authority to the International Bureau to "seek input on the risk of warehousing and, if necessary, [to] modify the Section 43.82 reporting manual to require all U.S. international carriers to identify in their annual circuit status reports the facility on which each circuit is activated or idle."²

The FCC's concern with regard to preventing the anticompetitive "warehousing" of international transmission capacity is part and parcel of its historical policy of preventing such activity in other industry segments. For example, the Commission had adopted rules prohibiting the "warehousing, hoarding, and brokering" of "800"-service toll free numbers, ruling that they constituted a vital numbering resource.³

Anticompetitive warehousing is also addressed in the Commission's Order adopting rules to prevent cable operators from leasing MMDS capacity where there is system overlap. This was a market in which a contrary rule would have amounted to "warehousing competition" because by leasing and not using capacity in an MMDS system the cable operator would co-opt a potential source of multichannel video competition.

Moreover, the FCC consistently has acted to prevent wireless and satellite service licensees from warehousing valuable spectrum that could be used by competitors. For example, the Commission recently included a ban on warehousing of spectrum in recent orders concerning the redesignation of the 17.7-19.7 gigahertz frequency band and the transfer of direct broadcast satellite licenses.⁴ The anti-warehousing policy also has

¹ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Rel. Nov. 26, 1997, para. 285.

² Id.

³ See *In the Matter of Toll-Free Service Access Codes*, Fourth Report and Order and Memorandum Opinion and Order, Rel. March 31, 1998, para. 6.

⁴ See *In the Matter of Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz frequency Bands, and the Allocation of Additional*

extended to policies designed to prevent satellite licensees from holding onto orbital locations indefinitely without building and launching satellites into those slots.

The common denominator running through the FCC's anti-warehousing policies is the need to prevent market players from locking up resources needed by other market players. As restated recently in the Foreign Participation Order, this principle holds true in the case of transatlantic undersea cable capacity. Regardless of how much capacity does or does not exist on a given route, any actions having the effect of idling half-circuit capacity clearly take that capacity off the market, increasing costs for competitors, which must then invest in additional capacity to compensate for their idled half-circuits. As such, efforts to purposely strand capacity are in and of themselves damaging to competition in the international telecommunications market.

Given the unprecedented magnitude and broad implications of the joint venture, C&W has advanced the straight-forward solution that, should the joint venture choose to redirect its traffic from currently "matched" C&W half-circuits (or those of other similarly situated carriers) it be required to offer its "matched" capacity to the stranded carrier at market rates. This protection is only triggered if this eventuality should occur.

Please direct any questions or concerns to the undersigned.

Sincerely,


Keith Bernard

Cc: Kathryn O'Brien
Sherille Ismail